



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[C-570-115]

Certain Glass Containers from the People's Republic of China: Initiation of Countervailing Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

DATES: Applicable October 15, 2019.

FOR FURTHER INFORMATION CONTACT: Maliha Khan or Eli Lovely, AD/CVD

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SUPPLEMENTARY INFORMATION:

The Petition

On September 25, 2019, the U.S. Department of Commerce (Commerce) received a countervailing duty (CVD) petition (Petition) concerning imports of certain glass containers (glass containers) from the People's Republic of China (China) filed in proper form on behalf of the American Glass Packaging Coalition (the petitioner).¹ The CVD Petition was accompanied by an antidumping duty (AD) Petition concerning imports of glass containers from China.

¹ See Petitioner's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Certain Glass Containers from the People's Republic of China," dated September 25, 2019 (the Petition).

On September 30, 2019, Commerce requested supplemental information pertaining to certain aspects of the Petition.² The petitioner filed responses to this request on October 4, 2019.³

In accordance with section 702(b)(1) of the Tariff Act of 1930, as amended (the Act), the petitioner alleges that the Government of China (GOC) is providing countervailable subsidies, within the meaning of sections 701 and 771(5) of the Act, to producers of glass containers in China, and that such imports are materially injuring, or threatening material injury to, the domestic industry producing glass containers in the United States. Consistent with section 702(b)(1) of the Act and 19 CFR 351.202(b), for those alleged programs on which we are initiating a CVD investigation, the Petition is accompanied by information reasonably available to the petitioner supporting its allegations.

Commerce finds that the petitioner filed this Petition on behalf of the domestic industry because the petitioner is an interested party as defined in sections 771(9)(C) and (E) of the Act. Commerce also finds that the petitioner demonstrated sufficient industry support with respect to the initiation of the requested CVD investigation.⁴

Period of Investigation

Because the Petition was filed on September 25, 2019, the period of investigation (POI) is January 1, 2018 through December 31, 2018.⁵

² See Commerce's Letter, "Petitions for the Imposition of Antidumping and Countervailing Duties on Imports of Certain Glass Containers from the People's Republic of China: Supplemental Questions," dated September 30, 2019; *see also* Commerce's Letter, "Petition for the Imposition of Countervailing Duties on Imports of Certain Glass Containers from the People's Republic of China: Supplemental Questions," dated September 30, 2019.

³ See Petitioner's Letters, "Certain Glass Containers from the People's Republic of China: Responses to First Supplemental Questions on General Issues Volume I of the Petition," dated October 4, 2019; and "Certain Glass Containers from the People's Republic of China: Responses to First Supplemental Questions on China CVD Volume III of the Petition," dated October 4, 2019.

⁴ See "Information Relating to the Degree of Industry Support for the Petition" section, *infra*.

⁵ See 19 CFR 351.204(b)(1).

Scope of the Investigation

The merchandise covered by this investigation is glass containers from China. For a full description of the scope of this investigation, *see* the Appendix to this notice.

Comments on Scope of the Investigation

During our review of the Petition, we contacted the petitioner regarding the proposed scope to ensure that the scope language in the Petition is an accurate reflection of the products for which the domestic industry is seeking relief.⁶ As a result, the scope of the Petition was modified to clarify the description of the merchandise covered by the Petition. The description of the merchandise covered by this investigation, as described in the Appendix to this notice, reflects these clarifications.

As discussed in the *Preamble* to Commerce's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage (scope).⁷ Commerce will consider all comments received from interested parties and, if necessary, will consult with interested parties prior to the issuance of the preliminary determination. If scope comments include factual information,⁸ all such factual information should be limited to public information. To facilitate preparation of its questionnaires, Commerce requests that all interested parties submit scope comments by 5:00 p.m. Eastern Time (ET) on November 4, 2019, which is 20 calendar days from the signature date of this notice. Any rebuttal comments, which may include factual information, must be filed by 5:00 p.m. ET on November 14, 2019, which is 10 calendar days from the initial comment deadline.⁹

⁶ See AD Supplement Vol. I, at 1-4 and Exhibits I-Supp-2 through I-Supp-4; *see also* Memorandum, "Phone Call with Counsel to the Petitioner," dated October 8, 2019.

⁷ See *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27323 (May 19, 1997).

⁸ See 19 CFR 351.102(b)(21) (defining "factual information").

⁹ See 19 CFR 351.303(b).

Commerce requests that any factual information the parties consider relevant to the scope of the investigation be submitted during this time period. However, if a party subsequently finds that additional factual information pertaining to the scope of the investigation may be relevant, the party may contact Commerce and request permission to submit the additional information. All such comments must also be filed on the record of the concurrent AD and CVD investigations.

Filing Requirements

All submissions to Commerce must be filed electronically using Enforcement and Compliance's Antidumping Duty and Countervailing Duty Centralized Electronic Service System (ACCESS).¹⁰ An electronically filed document must be received successfully in its entirety by the time and date it is due. Documents exempted from the electronic submission requirements must be filed manually (*i.e.*, in paper form) with Enforcement and Compliance's APO/Dockets Unit, Room 18022, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, and stamped with the date and time of receipt by the applicable deadlines.

Consultations

Pursuant to sections 702(b)(4)(A)(i) and (ii) of the Act, Commerce notified the GOC of the receipt of the Petition and provided it the opportunity for consultations with respect to the CVD Petition.¹¹ The GOC did not request consultations.

Determination of Industry Support for the Petition

¹⁰ See *Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures*, 76 FR 39263 (July 6, 2011); see also *Enforcement and Compliance; Change of Electronic Filing System Name*, 79 FR 69046 (November 20, 2014) for details of Commerce's electronic filing requirements, effective August 5, 2011. Information on using ACCESS can be found at <https://access.trade.gov/help.aspx> and a handbook can be found at <https://access.trade.gov/help/Handbook%20on%20Electronic%20Filing%20Procedures.pdf>.

¹¹ See Commerce's Letter, "Countervailing Duty Petition on Certain Glass Containers from China," dated October 3, 2019.

Section 702(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 702(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 702(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, Commerce shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A); or (ii) determine industry support using a statistically valid sampling method to poll the “industry.”

Section 771(4)(A) of the Act defines the “industry” as the producers, as a whole, of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs Commerce to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both Commerce and the ITC must apply the same statutory definition regarding the domestic like product,¹² they do so for different purposes and pursuant to a separate and distinct authority. In addition, Commerce’s determination is subject to limitations of time and information. Although this may result in

¹² See section 771(10) of the Act.

different definitions of the like product, such differences do not render the decision of either agency contrary to law.¹³

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation” (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the petitioner does not offer a definition of the domestic like product distinct from the scope of the Petition.¹⁴ Based on our analysis of the information submitted on the record, we have determined that glass containers, as defined in the scope, constitute a single domestic like product, and we have analyzed industry support in terms of that domestic like product.¹⁵

In determining whether the petitioner has standing under section 732(c)(4)(A) of the Act, we considered the industry support data contained in the Petition with reference to the domestic like product as defined in the “Scope of the Investigation,” in the Appendix to this notice. To establish industry support, the petitioner provided its own 2018 production of the domestic like product, as well as the 2018 production of the company that supports the Petition.¹⁶ The petitioner compared the total production of the supporters of the Petition to the estimated total

¹³ See *USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001) (citing *Algoma Steel Corp., Ltd. v. United States*, 688 F. Supp. 639, 644 (CIT 1988), *aff’d* 865 F.2d 240 (Fed. Cir. 1989)).

¹⁴ See Volume I of the Petition, at 15-17 and Exhibit I-15; see also General Issues Supplement, at 7.

¹⁵ For a discussion of the domestic like product analysis as applied to this case and information regarding industry support, see Antidumping Duty Initiation Checklist: Certain Glass Containers from the People’s Republic of China (AD Initiation Checklist), at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Glass Containers from the People’s Republic of China (Attachment II). This checklist is dated concurrently with this notice and on file electronically via ACCESS. Documents filed via ACCESS are also available in the Central Records Unit, Room B8024 of the main Commerce building.

¹⁶ See Volume I of the Petition, at 2-3 and Exhibits I-3 and I-4; see also General Issues Supplement, at 6 and Exhibit I-Supp-7.

production of the domestic like product for the entire domestic industry.¹⁷ We relied on data provided by the petitioner for purposes of measuring industry support.¹⁸

Our review of the data provided in the Petition, the General Issues Supplement, and other information readily available to Commerce indicates that the petitioner has established industry support for the Petition.¹⁹ First, the Petition established support from domestic producers (or workers) accounting for more than 50 percent of the total production of the domestic like product and, as such, Commerce is not required to take further action in order to evaluate industry support (*e.g.*, polling).²⁰ Second, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(i) of the Act because the domestic producers (or workers) who support the Petition account for at least 25 percent of the total production of the domestic like product.²¹ Finally, the domestic producers (or workers) have met the statutory criteria for industry support under section 702(c)(4)(A)(ii) of the Act because the domestic producers (or workers) who support the Petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the Petition.²² Accordingly, Commerce determines that the Petition was filed on behalf of the domestic industry within the meaning of section 702(b)(1) of the Act.

Injury Test

¹⁷ See Volume I of the Petition, at 2-3 and Exhibits I-2 through I-4; *see also* General Issues Supplement, at 4-6 and Exhibits I-Supp-5 through I-Supp-7.

¹⁸ See Volume I of the Petition, at 2-3 and Exhibits I-2 through I-4; *see also* General Issues Supplement, at 4-6 and Exhibits I-Supp-5 through I-Supp-7. For further discussion, *see* China AD Initiation Checklist, at Attachment II.

¹⁹ See Countervailing Duty Initiation Checklist: Certain Glass Containers from the People's Republic of China Initiation Checklist (CVD Initiation Checklist) at Attachment II, Analysis of Industry Support for the Antidumping and Countervailing Duty Petitions Covering Certain Glass Containers from the People's Republic of China (Attachment II).

²⁰ *Id.*; *see also* section 702(c)(4)(D) of the Act.

²¹ See CVD Initiation Checklist at Attachment II.

²² *Id.*

Because China is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Act, section 701(a)(2) of the Act applies to this investigation. Accordingly, the ITC must determine whether imports of the subject merchandise from China materially injure, or threaten material injury to, a U.S. industry.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that imports of the subject merchandise are benefitting from countervailable subsidies and that such imports are causing, or threaten to cause, material injury to the U.S. industry producing the domestic like product. In addition, the petitioner alleges that subject imports exceed the negligibility threshold provided for under section 771(24)(A) of the Act.²³

The petitioner contends that the industry’s injured condition is illustrated by a significant and increasing volume of subject imports; reduced market share; underselling and price depression or suppression; lost sales and revenues; declining financial performance; a decline in the domestic industry’s production, capacity utilization, and U.S. shipments; shuttered manufacturing facilities; and an adverse impact on employment variables.²⁴ We have assessed the allegations and supporting evidence regarding material injury, threat of material injury, causation, as well as negligibility, and we have determined that these allegations are properly supported by adequate evidence, and meet the statutory requirements for initiation.²⁵

Initiation of CVD Investigation

Based upon the examination of the Petition on glass containers from China, we find that the Petition meets the requirements of section 702 of the Act. Therefore, we are initiating a

²³ See Volume I of the Petition at 17-19 and Exhibits I-13 and I-36.

²⁴ *Id.* at 13, 17-34 and Exhibits I-13 and I-17 through I-33.

²⁵ See CVD Initiation Checklist at Attachment III, Analysis of Allegations and Evidence of Material Injury and Causation for the Antidumping and Countervailing Duty Petitions Covering Certain Glass Containers from the People’s Republic of China.

CVD investigation to determine whether imports of glass containers from China benefit from countervailable subsidies conferred by the Government of China. Based on our review of the Petition, we find that there is sufficient information to initiate a CVD investigation on each of the alleged programs. For a full discussion of the basis for our decision to initiate on each program, *see* CVD Initiation Checklist. A public version of the initiation checklist for this investigation is available on ACCESS. In accordance with section 703(b)(1) of the Act and 19 CFR 351.205(b)(1), unless postponed, we will make our preliminary determination no later than 65 days after the date of this initiation.

Respondent Selection

The petitioner named 75 companies in China as producers/exporters of glass containers.²⁶ Commerce intends to follow its standard practice in CVD investigations and calculate company-specific subsidy rates in this investigation. In the event Commerce determines that the number of companies is large and it cannot individually examine each company based upon Commerce's resources, where appropriate, Commerce intends to select mandatory respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports of glass containers from China during the POI under the appropriate Harmonized Tariff Schedule of the United States numbers listed in the "Scope of the Investigation," in the Appendix.

On October 8, 2019, Commerce released CBP data on imports of glass containers from China under administrative protective order (APO) to all parties with access to information protected by APO and indicated that interested parties wishing to comment on the CBP data

²⁶ *See* Petition Volume I at Exhibit I-12.

must do so within three business days of the publication date of the notice of initiation of this investigation.²⁷ We further stated that we will not accept rebuttal comments.

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305(b). Instructions for filing such applications may be found on the Commerce website at <http://enforcement.trade.gov/apo>.

Comments must be filed electronically using ACCESS. An electronically filed document must be received successfully, in its entirety, by ACCESS no later than 5:00 p.m. ET on the date noted above. We intend to finalize our decisions regarding respondent selection within 20 days of publication of this notice.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act and 19 CFR 351.202(f), a copy of the public version of the Petition has been provided to the government of China via ACCESS.

Furthermore, to the extent practicable, Commerce will attempt to provide a copy of the public version of the Petition to each exporter named in the Petition, as provided under 19 CFR 351.203(c)(2).

ITC Notification

Commerce will notify the ITC of its initiation, as required by section 702(d) of the Act.

Preliminary Determinations by the ITC

The ITC will preliminarily determine, within 45 days after the date on which the Petition was filed, whether there is a reasonable indication that imports of glass containers from China are materially injuring or threatening material injury to a U.S. industry.²⁸ A negative ITC

²⁷ See Memorandum, “Certain Glass Containers from the People’s Republic of China Countervailing Duty Petition: Release of Customs Data from U.S. Customs and Border Protection,” dated October 8, 2019.

²⁸ See section 733(a) of the Act.

determination will result in the investigation being terminated.²⁹ Otherwise, this investigation will proceed according to statutory and regulatory time limits.

Submission of Factual Information

Factual information is defined in 19 CFR 351.102(b)(21) as: (i) evidence submitted in response to questionnaires; (ii) evidence submitted in support of allegations; (iii) publicly available information to value factors under 19 CFR 351.408(c) or to measure the adequacy of remuneration under 19 CFR 351.511(a)(2); (iv) evidence placed on the record by Commerce; and (v) evidence other than factual information described in (i)–(iv). Any party, when submitting factual information, to specify under which subsection of 19 CFR 351.102(b)(21) the information is being submitted³⁰ and, if the information is submitted to rebut, clarify, or correct factual information already on the record, to provide an explanation identifying the information already on the record that the factual information seeks to rebut, clarify, or correct.³¹ Time limits for the submission of factual information are addressed in 19 CFR 351.301, which provides specific time limits based on the type of factual information being submitted. Please review the regulations prior to submitting factual information in this investigation.

Extensions of Time Limits

Parties may request an extension of time limits before the expiration of a time limit established under 19 CFR 351.301, or as otherwise specified by the Secretary. In general, an extension request will be considered untimely if it is filed after the expiration of the time limit established under 19 CFR 351.301. For submissions that are due from multiple parties simultaneously, an extension request will be considered untimely if it is filed after 10:00 a.m. ET

²⁹ *Id.*

³⁰ *See* 19 CFR 351.301(b).

³¹ *See* 19 CFR 351.301(b)(2).

on the due date. Under certain circumstances, Commerce may elect to specify a different time limit by which extension requests will be considered untimely, if the submissions are due from multiple parties simultaneously. In such a case, Commerce will inform parties in a letter or memorandum of the deadline (including a specified time) by which extension requests must be filed to be considered timely. An extension request must be made in a separate, standalone submission; under limited circumstances Commerce will grant untimely-filed requests for the extension of time limits. Parties should review *Extension of Time Limits; Final Rule*, 78 FR 57790 (September 20, 2013), available at <http://www.gpo.gov/fdsys/pkg/FR-2013-09-20/html/2013-22853.htm>, prior to submitting extension requests or factual information in this investigation.

Certification Requirements

Any party submitting factual information in an AD or CVD proceeding must certify to the accuracy and completeness of that information.³² Parties must use the certification formats provided in 19 CFR 351.303(g).³³ Commerce intends to reject factual submissions if the submitting party does not comply with the applicable certification requirements.

Notification to Interested Parties

Interested parties must submit applications for disclosure under APO in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Commerce website at <http://enforcement.trade.gov/apo>.

On January 22, 2008, Commerce published *Antidumping and Countervailing Duty Proceedings: Documents Submission Procedures; APO Procedures*, 73 FR 3634 (January 22,

³² See section 782(b) of the Act.

³³ See *Certification of Factual Information to Import Administration During Antidumping and Countervailing Duty Proceedings*, 78 FR 42678 (July 17, 2013) (*Final Rule*); see also frequently asked questions regarding the *Final Rule*, available at http://enforcement.trade.gov/tlei/notices/factual_info_final_rule_FAQ_07172013.pdf.

2008). Parties wishing to participate in this investigation should ensure that they meet the requirements of these procedures (*e.g.*, the filing of letters of appearance as discussed at 19 CFR 351.103(d)).

This notice is issued and published pursuant to sections 702 and 777(i) of the Act and 19 CFR 351.203(c).

Dated: October 15, 2019.

Jeffrey I. Kessler,
Assistant Secretary
for Enforcement and Compliance.

Appendix

Scope of the Investigation

The merchandise covered by this investigation are certain glass containers with a nominal capacity of 0.059 liters (2.0 fluid ounces) up to and including 4.0 liters (135.256 fluid ounces) and an opening or mouth with a nominal outer diameter of 14 millimeters up to and including 120 millimeters. The scope includes glass jars, bottles, flasks and similar containers; with or without their closures; whether clear or colored; and with or without, design or functional enhancements (including, but not limited to, handles, embossing, labeling, or etching).

Excluded from the scope of the investigation are: (1) glass containers made of borosilicate glass, meeting United States Pharmacopeia requirements for Type 1 pharmaceutical containers; (2) glass containers without ‘mold seams’, ‘joint marks’, or ‘parting lines’; and (3) glass containers without a ‘finish’ (*i.e.*, the section of a container at the opening including the lip and ring or collar, threaded or otherwise compatible with a type of closure to seal the container’s contents, including but not limited to a lid, cap, or cork).

Glass containers subject to this investigation are specified within the Harmonized Tariff Schedule of the United States (HTSUS) under subheadings 70 10.90.5009, 7010.90.5019, 7010.90.5029, 7010.90.5039, 7010.90.5049, 7010.90.5055, 7010.90.5005, 7010.90.5015, 7010.90.5025, 7010.90.5035, and 7010.90.5045. The HTSUS subheadings are provided for convenience and customs purposes only. The written description of the scope of the investigations is dispositive.

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